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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,200	12/21/2001	Juanita Mercure	41836.00055USD1	8312

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EXAMINER
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ROSSI, JESSICA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/038,200

Applicant(s)

MERCURE ET AL.

Examiner

Jessica L. Rossi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 5/3/04; Amendment.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***RCE***

1. The request filed on 4/14/04 for a RCE under 37 CFR 1.114 based on parent Application No. 10/038,200 is acceptable and a RCE has been established. An action on the RCE follows.

***Response to Amendment***

2. The action is in response to the amendment dated 5/3/04. Claim 2 was canceled. Claims 1 and 3-23 are pending. Claims 15-23 are withdrawn from further consideration.

3. The rejection of claims 1 and 3-14 under 35 U.S.C. 112 2<sup>nd</sup> paragraph, as set forth in paragraph 5 of the previous office action, has been withdrawn in light of the present amendment.

4. The rejection of claims 1 and 3-14 under 35 U.S.C. 112 1<sup>st</sup> paragraph, as set forth in paragraph 7 of the previous office action, has been withdrawn in light of the present amendment.

5. The rejection of claims 1, 3-4, and 7-14 under 35 U.S.C. 103(a) as being unpatentable over Wynne '743 (of record) in view of Ikeda (of record) and Wynne '373, or alternatively, Ikeda in view of Wynne '743 and Wynne '373, as set forth in paragraph 9 of the previous office action, has been withdrawn in light of the added limitations pertaining to the thickness of the tie layer.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 3-4, and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynne et al. (US 5328743; of record) in view of Ikeda (US 6214476; of record), Wynne et al.

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(US 5773373; of record), and Akao (US 4331725), or alternatively, Ikeda in view of Wynne '743, Wynne '373, and Akao.

*\*Applicant is directed to paragraph 9 of the previous office action dated 3/9/04 for a complete discussion of the Wynne '743, Ikeda, and Wynne '373 references.*

With respect to claim 1, Ikeda teaches extruding the elastomeric tie/adhesive layer between the thermoplastic sheet and shrink film (column 12, lines 45-50), as set forth in paragraph 9 of the previous office action. One illustrative embodiment provided in the Ikeda reference teaches the elastomeric tie layer being 7% of the total thickness of the shrink wrap (column 14, lines 4-7) while another embodiment teaches the tie layer being 33% of the total thickness of the shrink wrap (column 13, lines 51-53). However, both Wynne '743 and Ikeda are silent as to the tie layer being about 15-25% of the total thickness of the shrink wrap.

One skilled in the shrink wrap art would have readily appreciated the need to employ extrusion conditions (i.e. temperature) that do not induce premature shrinking of the shrink film, since shrink wrap is not supposed to shrink until it is later applied to an object. Also, premature shrinking would detrimentally affect bonding of the layers and the aesthetics of the finished laminate due to wrinkling. The skilled artisan would have also appreciated that the amount of heat transferred to the shrink film during extrusion of the tie layer is largely dependent on the thickness of the tie layer (thicker the tie layer, the more heat transferred). Therefore, the skilled artisan would have been motivated to select a tie layer thickness that does not transfer an excessive amount of heat to the shrink film such that premature shrinkage occurs while still being thick enough to promote adequate bonding between the layers.

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However, it would have been obvious to the skilled artisan at the time the invention was made to use a tie layer whose percentage of the overall thickness of the shrink wrap falls within that being claimed by the present invention for the tie layers of Wynne '743 and Ikeda because it is known in the shrink wrap packaging art to extrude an elastomeric tie layer 6 (column 2, lines 47-48) between (column 2, lines 58-60) two thermoplastic oriented films 4, 5 (= shrink films; column 2, lines 29-33), wherein the tie layer is **18% of the total thickness** of the shrink wrap (shrink film 4 = 45u, shrink film 5 = 45u, tie layer 6 = 20u; column 3, line 48 – column 5, line 7), as taught by Akao; especially since the examples provided by Ikeda show that the thickness of the extruded tie layer can be as little as 7% of the total thickness of the shrink wrap or as much as 33% of the total thickness of the shrink wrap.

Regarding claims 3-4 and 7-14, Applicant is directed to paragraph 9 of the previous office action.

8. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynne et al. '743, Ikeda, Wynne et al. '373, and Akao, or alternatively, Ikeda, Wynne et al. '743, Wynne et al. '373, and Akao as applied to claim 1 above, and further in view of Hendrickson (US 4087577; of record).

Regarding claims 5-6, Applicant is directed to paragraph 10 of the previous office action.

***Response to Arguments***

9. Applicant's arguments filed 4/14/04 have been fully considered but they are not persuasive.

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10. On page 7 of the arguments, Applicant argues that neither Wynne '743 nor Ikeda teach or suggest maintaining the thickness of the tie layer during extrusion to insure that shrinkage does not begin during the process.

The examiner respectfully points out that this argument is not commensurate with the scope of the claimed invention. However, as set forth in paragraph 7 above, the Akao reference has provided motivation to use a tie layer having a thickness that is 18% of the overall thickness of the shrink wrap for that of Wynne '743 and Ikeda. Therefore, since Applicant prevents premature shrinkage by using a tie layer that is 15-25% of the overall thickness of the shrink wrap, the teachings of Wynne '743 and Ikeda taken in light Akao also prevent premature shrinkage.

11. On page 7 of the arguments, Applicant argues that Ikeda teaches the tie layer thickness being 30% of the overall thickness or 7% of the overall thickness. Therefore, the shrink wrap would shrink during the extrusion process or the tie layer would not laminate all the layers to produce a strong bond.

First, the examiner points out that Applicant's statements regarding the undesirable results relating to Ikeda's use of a tie layer whose thickness is 30% or 7% of the overall thickness of the shrink wrap is mere speculation. Second, Ikeda's percentages were purely illustrative and by no means limiting. Therefore, taken in light of the teachings of Akao, the skilled artisan would have been motivated to extrude a tie layer whose thickness is a percentage of the overall thickness of the shrink wrap such that this percentage falls within Applicant's claimed range, as set forth in paragraph 7 above.

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12. On pages 7-8 of the arguments, Applicant argues that one combining the teachings of Wynne '743 and Ikeda would not arrive at the claimed invention since the unexpected result of the shrink wrap not beginning to shrink due to the thickness of the tie layer is not suggested in the prior art; therefore, the examiner has not established a prima facie case of obviousness.

The examiner respectfully points out that Akao does teach extruding an elastomeric tie layer between two thermoplastic shrink films wherein the tie layer's thickness is 18% of the total thickness of the shrink wrap, as set forth in paragraph 7 above, wherein the skilled artisan would have been motivated by this teaching to use a tie layer for that of Wynne '743 and Ikeda having a thickness that is 18% of the total thickness of the shrink wrap; therefore, the examiner has established a prima facie case of obviousness.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jessica L. Rossi** whose telephone number is **571-272-1223**. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Jessica L. Rossi*  
Jessica L. Rossi  
Patent Examiner  
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